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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,901	01/16/2004	Alex Zarenin	018638-04-0183	8477
9629 7590 06/11/2009 MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004				
EXAMINER				
TO, JENNIFER N				
ART UNIT		PAPER NUMBER		
2195				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/759,901

Applicant(s)

ZARENIN ET AL.

Examiner

JENNIFER N. TO

Art Unit

2195

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 4-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 4-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 4-9 are pending for examination.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Prakash et al (hereafter Prakash) (U.S. Patent No. 6434626).

4. As per claim 4, Prakash teaches a method for identifying a plurality of active devices on a network (abstract, monitoring the plurality of active devices on a SAN network) comprising:

executing a program comprising issuing to each of the active devices one or more first requests for information comprising an indication of a presence of the device on the network and a device architecture (co. 4, lines 21-50; col. 7, lines 51-67; col. 8, lines 1-5, 31-50; col. 9, lines 38-43);

receiving in response to the first requests a response (col. 9, lines 50-67; col. 10, lines 1-16, 20-33);

receiving, based on the device architecture indicated in the response, one or more messages that request additional information about the device, wherein the

messages are customized and executed outside the program (col. 10, lines 36-44, 48-57);

executing the messages (col. 10, lines 57-67; col. 11, lines 1-4); and
receiving the additional information (col. 10, lines 59-61, the additional information is sent to the OSM, thus the OSM receiving the additional information).

5. Prakash did not specifically teach scripts to request additional information as recited in the claim. Instead, Prakash teaches messages to request additional information. It would have been obvious to one of an ordinary skill in the art at the time the invention was made to have recognized that the scripts as recited in the claim is the functional equivalent as the messages disclosed in Prakash because both of them customized for requesting additional information from the device indicated in the response. Thus, the messages as disclosed in Prakash are the same as the scripts of as recited in the claim. Therefore, it would have been obvious to one of an ordinary skill in the art at the time the invention was made to have used Prakash's system to monitor network performance which avoids traffic overload (Prakash, col. 4, lines 16-17).

6. As per claims 5-6, they are machine readable medium and system claims that corresponding to method claim 4. Therefore, they are rejected for the same reason as claim 4 above.

7. Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over McNally et al. (hereafter McNally) (U.S. Patent No. 6549932), and in view of Potter et al. (hereafter Potter) (U.S. Patent No. 7222148).

8. McNally was cited in the previous office action.

9. As per claim 7, McNally teaches the invention substantially as claim including a system comprising:

a manager object including a plurality of workers threads operating in parallel (fig. 4, col. 2, lines 41-44; col. 6, lines 49-57; col. 8, lines 21-23, the manager object 14 (object manager) including a plurality of discovery agents (worker threads) operating in parallel);

a plurality of request objects (col. 3, lines 15-17, col. 8, lines 3-4, col. 9, lines 15-23; col. 13, lines 47, the plurality of request objects referred here are the request to discover the target device that the task deployment needed);

a computer configured to process the manager object and the plurality of request objects, the manager object configured to received each of the plurality of request objects (fig. 4, col. 3, lines 15-30, the object manager 14 received each of the plurality of request objects);

a plurality of active devices on a network in communication with the computer, each of the plurality of request objects representative one of the active devices and a

request for an indication of a presence of the one of the active devices on the network (col. 2, lines 15-18; col. 3, lines 15-56);

storage device coupled to the network (col. 3, lines 56-61; col. 16, lines 10);

a manager object further configured to distribute each of the plurality of request objects to one or more of the plurality of worker threads (col. 3, lines 15-56; col. 8, lines 20-26; the dispatch mechanism is a part of the object manager dispatch the request objects to the discovery agents in order for the discovery agents to perform the discovery operation);

each of the plurality of worker threads configured to process each of the plurality of request objects and to perform at least identical discovery functions on the plurality of active devices in response to the request for an indication (col. 2, lines 40-41; col. 6, lines 49-57; col. 10, lines 50-67; col. 11, lines 1-67; col. 12, lines 1-9), and to send each of the plurality of request objects to the manager object (col. 9, lines 61-67; col. 10, lines 1-2);

the manager object further configured to receive each of the plurality of request objects from the one or more of the plurality of worker threads after a response to the request for an indication has been received (col. 11, line 66; col. 12, lines 1-2); and

the storage device configured to store response received for each of the plurality of request objects (col. 3, lines 56-61; col. 16, lines 10).

10. McNally did not specifically teach a request queue, organizing the plurality of the request objects in the request queue, a result queue, and organizing response of the plurality of the request objects in the result queue.

11. However, Potter teach a request queue, organizing the plurality of the request objects in the request queue, a result queue, and organizing response of the plurality of the request objects in the result queue (abstract; col. 2, lines 4-24).

12. It would have been obvious to one of an ordinary skill in the art at the time the invention was made to try to in cooperate the teaching of Potter into McNally because both McNally and Potter teaching of distributing requests from manager to a plurality of nodes to process the requests in parallel, and Potter also teaches a request queue, result queue, and organizing the requests in the request/result queue would produced a system that allowing processing of requests in a timely manner.

13. As per claims 8-9, they are method and machine readable medium claims that corresponding to system claim 7. Therefore, they are rejected for the same reason as claim 7 above.

Response to Arguments

14. Applicant's arguments with respect to claims 4-6 have been considered but are moot in view of the new ground(s) of rejection over Prakash et al. (U.S. Patent no. 6434626).

15. Applicant's arguments with respect to claims 7-9 have been considered but are moot in view of the new ground(s) of rejection over McNally et al (U.S. Patent No. 6549932) (in view of new interpretation and new mapping).

16. In addition, it is noted that applicant argued with respect to combination of McNally and Potter that the examiner's conclusion of obviousness is based upon improper hindsight reasoning.

17. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Conclusion

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure (see attached PTO 892 form for details).

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENNIFER N. TO whose telephone number is (571)272-7212. The examiner can normally be reached on M-T 6AM- 3:30 PM, F 6AM- 2:30 PM.

21. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Meng-Ai An can be reached on (571) 272-3756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

22. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Primary Examiner, Art Unit 2194

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